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REMARKS

Applicants appreciate the Examiner's careful study of the pending application and claims.

The restriction requirement and subsequent provisional election of the Group I claims made by Mr. Summa on May 5, 2004, is hereby affirmed in this paper. The Group I claims are 1-38 and 72-80.

As an initial matter, paragraphs [0022] and [0030] have been amended to correct typographical and punctuation errors resulting from XML file conversion.

The Examiner rejected Claims 1-5 and 11-15 under 35 U.S.C. §102(b) as anticipated by U.S. Pat. No. 4,336,307 to Shiozaki *et al.*

Applicants respond by canceling Claims 1 and 3. Independent Claim 2 is currently amended to incorporate the recitations of Claim 3. Contrary to the Examiner's assertion, Applicants respectfully submit that the differences between "consisting essentially of" and "comprising" are legally well-established. The "consisting essentially of" language limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention.

The '307 patent describes a polyester blended with a sulfonate compound pore forming agent. According to Shiozaki, including the sulfonate with the polyester provides a blend that includes both sulfur (in the form of the sulfonate group) and an alkali metal or alkaline earth metal (Col. 3 line 58 through Col. 4, line 19). Even if standing alone, the presence of these inorganic elements would demonstrate a material effect upon polyester. Shiozaki goes further, however, and points out that the polyester-sulfonate blend increases the water and moisture absorbing properties of the polyester and improves their dyeing properties as well (Col. 4 lines 64-68). Additionally, Shiozaki refers to the metal-sulfonate compound in the blend as a "pore-forming agent" that reacts with an aqueous alkali solution to form the pores Shiozaki describes.

Therefore, this pore forming agent certainly materially affects the basic characteristic

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of the filament disclosed in the '307 patent. Thus, independent Claim 2 as amended and independent Claim 15 do not read on the '307 patent, and the '307 patent fails as a 35 U.S.C. §102(b) reference. Accordingly, the same is true for claims ultimately dependent from Claim 2 as amended.

The Examiner rejected Claims 1-2, 4-10, 72-74, and 76-80 under 35 U.S.C. §102(b) as anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over the abstract of JP 57139600A.

The '600A abstract is silent with respect to openings in the filament that allow water or other liquids to enter the filament via capillary action. The '600A abstract lacks any disclosure that the staple fiber disclosed possesses sufficient openings to fill with water. Indeed, further study of the full translation of the '600A application (copy included herewith) reveals a failure to disclose openings in the filament or staple fiber that would allow water or other liquids to enter the filament via capillary action. Thus, the '600A reference fails as a 35 U.S.C. §102(b) reference against independent Claims 2 and 72 and claims dependent therefrom.

The '600A application further discloses a wet sheet obtained by mixing drawn and undrawn staple fibers. There is no motivation in the '600A application to provide a single kind of homogenous polyester filament, staple fiber, or nonwoven fabric of the claimed invention. Thus, the '600A application fails as a 35 U.S.C. §103(a) reference against independent Claims 2 and 72 and their respective dependent claims.

The Examiner rejected Claims 16-38 under 35 U.S.C. §103(a) as being unpatentable over JP 03-287848 to Tamiya *et al.* in view of U.S. Pat. No. 6,368,990 to Jennergren *et al.* and Claim 75 as being unpatentable over JP 57139600A.

Because Claim 75 is dependent from independent Claim 72, Applicants submit that the Examiner's argument against Claim 75 fail for the same reasons as do the arguments against Claim 72.

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With respect to independent Claims 16, 28, 29, 30, and 37, the Tamiya '848 abstract discloses a fiber conjugate comprising two kinds of polymer having a specific melting point therebetween. Likewise, the Jennergren '990 patent abstract discloses nonwovens fabrics formed of hollow filaments and/or staple fibers formed of a polypropylene composition.

After careful study of the entire translation of the Tamiya '848 application (copy included herewith) and the Jennergren '990 patent, Applicants respectfully submit that there is no motivation in either reference to provide a single kind of homogenous polyester filament, staple fiber, hollow filament, hollow polyester filament, or hollow staple fiber of the claimed invention.

Claims 28 and 37 incorporate the "consisting essentially of" language previously discussed. The "consisting essentially of" language limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. Claim 28 claims "A staple fiber consisting essentially of polyethylene terephthalate ..." and Claim 37 claims "A hollow staple fiber consisting essentially of polyethylene terephthalate" Clearly, both references disclose materials that materially affect the basic and novel characteristics of the claimed invention.

For example, the Tamiya '848 full text reference discloses a conjugate fiber comprising a core part and a sheath part. Although the core part may be formed of polyethylene terephthalate, the '848 application also discloses that the sheath completely surrounds and is bonded to the core part. *See* page 322, first column. Furthermore, Tamiya fails to suggest sufficient openings as claimed in the invention and as defined by the specification. Thus, the presence of the sheath material will materially affect the basic and novel characteristic of the claimed invention.

The Jennergren '990 patent teaches away from fabrics consisting essentially of polyethylene terephthalate. The Jennergren '990 patent teaches that fibrous webs formed of polyethylene "suffer poor abrasion resistance, resulting in an unsightly fuzzed appearance and possible contamination in sterile environments." *See* column 2, lines 5-11. The Jennergren '990 patent further teaches the use of polyethylene exclusively as a blending material with

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polypropylene. *See* column 5, lines 23-31.

Regarding Claims 16 and 28, both references are silent with respect to an absorption capability range. Therefore, Applicants submit that the combination of the Tamiya '848 application and the Jennergren '990 patent does not obviate Claims 16 and 28 since both references fail to disclose, even in passing, an absorption capability range.

Regarding independent Claims 29, 30, and 37, both the Tamiya '848 application and the Jennergren '990 patent are silent with respect to a staple fiber, a hollow filament, or a hollow polyester filament having sufficient openings therein for the staple fiber to substantially fill with liquid. The claimed aspect "having sufficient openings therein for the staple fiber to substantially fill with liquid" relates to capillary action exhibited by the filaments, staple fibers, hollow filaments, and hollow staple fibers of the invention. This aspect is supported in the specification in paragraphs [0030] to [0032] and [0040] to [0048]. Briefly, the claimed invention utilizes sufficient openings to take full advantage of the principle of capillary action, thus avoiding pressure buildup inside the filament that would negatively affect absorptivity.

As previously discussed, the Tamiya '848 application discloses a sheath part bonded to and surrounding the core part. Tamiya fails to teach or suggest openings in the sheath part as taught by the claimed invention.

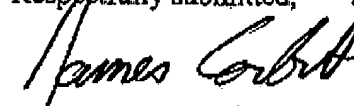
Furthermore, with regard to independent Claims 16, 28-30, and 37, the Tamiya '848 application fails to disclose the percentage of each type of fiber in the conjugate. This information is necessary for the combination with the Jennergren '990 patent because the Jennergren '990 patent discloses a preferred range of fiber blend. *See* column 5, lines 31-40. As the combination stands, Applicants will not assume that the fiber blend of the '848 abstract would not destroy the filament disclosed in the '990 patent, and vice versa. At the very least, any fiber blend will materially affect the basic and novel characteristic(s) of the claimed invention.

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Thus, the combination of JP 03-287848 to Tamiya *et al.*, in view of U.S. Pat. No. 6,368,990 to Jennergren *et al.*, fails as a 35 U.S.C. §103(a) rejection.

Based on the foregoing amendments, Applicants respectfully submit that Claims 2, 4-38, and 72-80 are in condition for immediate allowance and the same is respectfully requested.

Respectfully submitted,

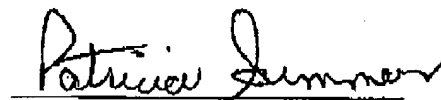


James Corbitt
Reg. No. 52,768

021176
SUMMA & ALLAN, P.A.
11610 North Community House Road
Suite 200, Ballantyne Corporate Park
Charlotte, NC 28277
Phone: 704-945-6700
Fax: 704-945-6735
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CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is sent by facsimile to the United States Patent and Trademark Office, Technology Center 1700, Art Unit 1771, Attn: Examiner Jennifer A. Boyd, at 703-872-9310 on September 28, 2004.


Patricia Summers